

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 09, 2014 Session

BARBARA JEAN BLAKE v. RUSSELL ALAN BLAKE

Appeal from the Chancery Court for Montgomery County
No. MCCHCVDI05459 Laurence M. McMillan, Jr., Chancellor

No. M2014-01016-COA-R3-CV - Filed March 30, 2015

This case requires us to consider whether the trial court had jurisdiction to hear a petition for contempt. Mother and the parties' child reside in Nevada, and Nevada had exercised jurisdiction over the child pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). Mother filed a petition seeking to hold Father in contempt for his alleged failure to abide by portions of an amended parenting plan and for his failure to pay certain marital debt. Mother also requested to have child support recalculated. Father filed a counter-petition for contempt alleging interference with his visitation. Mother asserted the Nevada court had jurisdiction over Father's counter-petition. The trial court, *sua sponte*, dismissed both petitions for contempt, holding that Nevada had jurisdiction. We affirm the trial court's dismissal of Father's counter-petition, but we reverse the court's dismissal of Mother's petition, which addresses marital debt, child support, and other issues unrelated to the custody of the children.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part and Reversed in Part

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and RICHARD H. DINKINS, J., joined.

Christopher J. Pittman and S. Allison Winters, Clarksville, Tennessee, for the appellant, Barbara Jean Blake.

Stacy A. Turner, Clarksville, Tennessee, for the appellee, Russell Alan Blake.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

After a fifteen-year marriage, Barbara Jean Blake (“Mother”) and Russell Alan Blake (“Father”) were divorced by final decree entered on March 28, 2006. The parties have two children, a son (born in 1995) and a daughter (born in 1998). The divorce decree incorporated a marital dissolution agreement and permanent parenting plan which named Mother the primary residential parent of the parties’ two minor children.

In January 2010, Mother wrote Father a letter stating that she intended to move to Boulder City, Nevada to marry Kevin Cost and that she planned to take the children with her. On February 12, 2010, Father filed a Petition for Contempt and in Opposition of Relocation of the Minor Children. The trial court entered an agreed order on August 23, 2010, stating that the parties’ son would reside with Father and that the parties’ daughter would relocate to Nevada with Mother. On January 21, 2011, the trial court entered an amended permanent parenting plan and an addendum to the parenting plan reflecting that, *inter alia*, Mother was the primary residential parent of the parties’ daughter and Father was the primary residential parent of the parties’ son. The addendum also required Father to maintain health and dental insurance on both children until Mother obtained employment.

The parties’ son reached the age of majority and graduated from high school in May 2013. Thereafter, Mother filed a Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) in the Family Division of the District Court for Clark County, Nevada (“Nevada court”), asserting that Nevada was her daughter’s “home state” and must exercise jurisdiction in all matters related to custody. Mother also registered and filed the January 21, 2011 permanent parenting plan and addendum as a “foreign judgment” with the Nevada court. The Nevada court held a hearing on September 3, 2013, at which Mother appeared in person and Chancellor McMillan of the Montgomery County, Tennessee Chancery Court appeared telephonically. Father did not participate in the hearing despite the fact that he was served with notice. The Nevada court entered an order on September 12, 2013 finding that “Chancellor McMillan advised Tennessee was an inconvenient forum and relinquished jurisdiction of the case to Nevada.” The court further held, “the home state of the minor child . . . is Nevada, and therefore pursuant to UCCJEA, NRS 125A.385 et al., Nevada must exercise exclusive jurisdiction over the minor[.]”

On January 8, 2014, Mother filed a petition for contempt in the Chancery Court for Montgomery County, Tennessee (“chancery court”) requesting the court to hold Father in criminal contempt for his failure to: (1) pay the debt owing on the parties’ credit card as required by the final decree of divorce; (2) take a parenting class as required by the amended

parenting plan; (3) maintain health insurance on the parties' daughter until Mother obtained employment that provided health insurance as required by the "addendum to parenting plan, paragraph C"; (4) provide any proof by his accountant that would justify him claiming the parties' son on his taxes as required by the amended parenting plan; and (5) provide proof of his income as required by the amended parenting plan. Mother also requested that the amount of Father's child support be recalculated. On February 26, 2014, Father filed an answer and counter-petition for contempt alleging that Mother interfered with his visitation with the parties' daughter. Mother filed a motion to dismiss Father's counter-petition for contempt, asserting that the issues Father raised in his counter-petition were more properly addressed in Nevada pursuant to the Nevada court's September 12, 2013 order.

The trial court held a hearing on Mother's motion to dismiss Father's counter-petition and held, *sua sponte*, that both Mother's petition for contempt and Father's counter-petition for contempt should be dismissed. The court held, in its order entered May 7, 2014, that:

The Court, on its own motion, has determined that since all parties have attorneys in Nevada and there is current litigation^[1] in Nevada regarding visitation with the parties' minor daughter, the Nevada litigation is appropriate to address all issues and disputes between the parties, including disputes over allegations that a party failed to comply with terms set forth in the Final Decree of Divorce and issues of child support for the parties' minor child. . . . [T]he Nevada Court can address all issues between the parties.

Mother appeals, asserting the trial court erred in finding that Nevada had jurisdiction to address all issues raised in her contempt petition.

STANDARD OF REVIEW

This appeal focuses on the jurisdiction of the Tennessee court to resolve the issues raised in Mother's petition for contempt. A determination of whether a court has subject matter jurisdiction is a question of law, and we review the trial court's ruling on this issue, *de novo*, according it no presumption of correctness. *Stewart v. Schofield*, 368 S.W.3d 457, 462 (Tenn. 2012); *Brown v. Brown*, No. M2012-02084-COA-R3-CV, 2014 WL 1017509, at *5 (Tenn. Ct. App. Mar. 13, 2014). Likewise, we review questions of statutory interpretation *de novo*, with no presumption of correctness. *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000).

¹ There is nothing in the record regarding the specifics of the litigation before the Nevada court.

ANALYSIS

Subject matter jurisdiction concerns a court's authority to adjudicate a particular case; it "depends on the nature of the cause of action and the relief sought . . . and can only be conferred on a court by the constitution or a legislative act." *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712 (Tenn. 2012) (internal citation omitted). Thus, if a court's subject matter jurisdiction is questioned, the court must first determine the gravamen, or nature, of the case. *Newsome v. White*, No. M2001-03014-COA-R3-CV, 2003 WL 22994288, at *2 (Tenn. Ct. App. Dec. 22, 2003). Without subject matter jurisdiction, a court cannot enter an enforceable order. *McQuade v. McQuade*, No. M2010-00069-COA-R3-CV, 2010 WL 4940386, at *4 (Tenn. Ct. App. Nov. 30, 2010) (citing *Brown v. Brown*, 281 S.W.2d 492, 497 (Tenn. 1955)).

A brief review of the procedural posture of the case will be helpful to begin our analysis of whether the trial court erroneously held it was without subject matter jurisdiction to resolve the issues raised in Mother's petition for contempt. In May 2013, the Nevada court held that Nevada was the home state of the parties' daughter and assumed jurisdiction pursuant to the UCCJEA. Also in May 2013, Mother registered the January 2011 parenting plan and addendum to the parenting plan with the Nevada court. In January 2014, Mother filed a petition for contempt against Father in the Tennessee court, which is the subject of this appeal. The petition alleged that Father failed to abide by certain provisions of the final decree of divorce and the permanent parenting plan. Mother also requested that Father's child support be recalculated due to the parties' son reaching the age of majority. Father filed an answer and counter-petition alleging that Mother interfered with his visitation. Mother filed a motion to dismiss Father's counter-petition stating that, pursuant to the UCCJEA, Nevada had jurisdiction regarding the claim in Father's counter-petition. Then, on its own motion, the trial court dismissed both Mother's and Father's petitions, holding that Nevada had jurisdiction over all issues raised in the motions for contempt.

A. Jurisdiction Under the UCCJEA

The Nevada court acquired jurisdiction under the UCCJEA, stating, "the home state of the minor child . . . is Nevada, and therefore pursuant to UCCJEA, NRS 125A.385 et al., Nevada must exercise exclusive jurisdiction over the minor[.]" The UCCJEA is codified at Tenn. Code Ann. §§ 36-6-201–243 and "governs jurisdiction between Tennessee and other states over child custody proceedings." *Button v. Waite*, 208 S.W.3d 366, 369 (Tenn. 2006). The stated purposes of the UCCJEA are to:

- (1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

- (2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;
- (3) Discourage the use of the interstate system for continuing controversies over child custody;
- (4) Deter abductions of children;
- (5) Avoid relitigation of custody decisions of other states in this state; and
- (6) Facilitate the enforcement of custody decrees of other states.

Tenn. Code Ann. § 36-6-202.

The issues before us concern much more than child custody. The scope of the contempt petition at the center of this dispute involves issues related to marital debt, taxes, health insurance, and child support. At oral argument, Father's counsel conceded that the UCCJEA does not confer jurisdiction on the Nevada court for issues related to marital debt. We agree. The parties' respective duties regarding marital debt are outlined in the final decree of divorce. These obligations have nothing to do with the custody of their daughter; therefore, jurisdiction is not conferred on the Nevada court pursuant to the UCCJEA. We reverse the trial court's order dismissing Mother's contempt petition as it relates to the parties' marital debt as ordered in the final divorce decree.

Father insists, however, that the trial court was correct in relinquishing jurisdiction over child support and issues related to the enforcement of the parenting plan to the Nevada court. Mother asserts that all issues in her contempt petition are governed by the Uniform Interstate Family Support Act ("UIFSA") and that jurisdiction is properly with the Tennessee court.

B. Jurisdiction Under the UIFSA

The UIFSA, codified at Tenn. Code Ann. § 36-5-2201, *et seq.*, "controls the establishment, enforcement, or modification of [child] support orders across state lines." *LeTellier v. LeTellier*, 40 S.W.3d 490, 493 (Tenn. 2001). Under the UIFSA, "a state that issues a support order has continuing exclusive jurisdiction over that order and no other state may modify that order as long as the issuing state has continuing exclusive jurisdiction." *Rodriguez v. Price*, No. E2007-02178-COA-R3-CV, 2008 WL 4457233, at *3 (Tenn. Ct. App. Oct. 6, 2008); *see* Tenn. Code Ann. § 36-5-2205. Tennessee Code Annotated section 36-5-2205(a) provides that the issuing tribunal maintains "continuing exclusive jurisdiction over a child support order" except in narrowly defined circumstances:

A tribunal of this state issuing a support order consistent with the law of this

state has continuing, exclusive jurisdiction over a child support order:

- (1) As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
- (2) Until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

Tenn. Code Ann. § 36-5-2205(a). This court has recognized that the interplay between the UCCJEA and the UIFSA “can create ‘parallel proceedings in different states’ which can in turn potentially lead to the ‘awkward’ and unsatisfactory severance of custody from child support.” *State ex rel. Strickland v. Copley*, No. W2007-01839-COA-R3-CV, 2008 WL 3875425, at *4 (Tenn. Ct. App. Aug. 21, 2008) (quoting *Straight v. Straight*, 195 S.W.3d 461, 466-67 (Mo. Ct. App. 2006)).

In this case, Tennessee issued the original child support order. Father, the obligor, continues to reside in Tennessee. Father has not filed a written consent with the Tennessee court to confer jurisdiction on the Nevada court to modify the order. *See* Tenn. Code Ann. § 36-5-2205(a)(1) and (2); *see also* Nev. Rev. Stat. § 130.611(b) (stating that a Nevada tribunal may modify a child support order issued in another state if Nevada is the state of residence of the child and “all of the parties . . . have filed consents in a record in the issuing tribunal for a tribunal of this State to modify the support order and assume continuing and exclusive jurisdiction.”). For these reasons, Tennessee retains continuing exclusive jurisdiction to modify the child support order. Therefore, the trial court erred in dismissing mother’s petition to modify child support.

At oral argument, Father presented an alternative position that, if this Court held the Tennessee court had jurisdiction to consider Mother’s petition to modify child support, then we should find Tennessee had jurisdiction to hear his counter-petition for contempt regarding Mother’s alleged interference with his visitation. Father asserts that Mother’s petition to modify his child support obligation necessarily requires the resolution of his counter-petition because the amount of child support he owes is dependent upon the number of days he exercises parenting time with the child. We are not persuaded by this argument. The UIFSA and the UCCJEA may create parallel proceedings in different states regarding custody and support, *State ex rel. Strickland*, 2008 WL 3875425, at *4, but the UCCJEA squarely addresses issues related to custody and visitation. Therefore, the Nevada court is the appropriate venue to consider Father’s petition for contempt based on Mother’s alleged interference with his visitation. We affirm the trial court’s dismissal of Father’s counter-petition.

C. Jurisdiction Over Contempt Petition for Issues in Parenting Plan

Finally, we consider whether the court erred in dismissing Mother’s contempt petition for Father’s alleged failure to abide by requirements of the permanent parenting plan and addendum. Specifically, Mother alleged that Father failed to take a parenting class, failed to maintain health insurance on the parties’ daughter, failed to provide any proof by his accountant that would justify his claiming the parties’ son on his taxes, and failed to provide proof of his income, as required by the amended parenting plan. Although contained in the parenting plan, none of these issues is directly related to custody or child support. The question before us, then, is whether the Tennessee court retains jurisdiction over the enforcement of the parenting plan when the alleged contemptuous conduct is unrelated to the custody of the child or child support?

There is a distinction between the modification of a custody decision and the enforcement of a previously entered court order. “Our supreme court has observed that a court which loses jurisdiction to modify custody ‘seemingly’ retains jurisdiction to enforce its unmodified custody order through contempt.” *Adams v. Cooper*, No. M1999-02664-COA-R3-CV, 2000 WL 225573, at *7 n.11 (Tenn. Ct. App. Feb. 29, 2000) (citing *Marcus v. Marcus*, 993 S.W.2d 596, 603 n.13 (Tenn. 1999)). In a more recent opinion, this Court considered whether a Tennessee trial court had subject matter jurisdiction to enter an order finding a mother in contempt for failing to cooperate with the father in executing the necessary documents for her children to obtain a passport as required by a 2012 consent order. *Heilig v. Heilig*, No. W2013-01232-COA-R3-CV, 2014 WL 820605, at *1 (Tenn. Ct. App. Feb. 28, 2014). The mother in *Heilig* lived in Illinois with the children, and the father lived in Pennsylvania. *Id.* at *3. The Court held that, “[e]ven if [the fact that both parties no longer live in Tennessee] means that the Tennessee court would not have had jurisdiction to *modify* the 2012 consent order, it could still *enforce* the order in the contempt proceeding.” *Id.* at *5 (emphasis in original).

Applying these principles here, it seems that although Tennessee no longer has jurisdiction to modify the child’s custody arrangements under the UCCJEA, the Tennessee court maintains jurisdiction to enforce the terms of the unmodified parenting plan,² especially where Father continues to reside in Tennessee. See *Snisky v. Whisenhunt*, 864 S.W.2d 875, 878 (Ark. Ct. App. 1993) (Arkansas court was asked to enforce a portion of an order which did not involve questions of “custody” and held that the UCCJEA was not implicated). Therefore, we conclude that the trial court erred in dismissing Mother’s petition for contempt based on Father’s alleged failure to comply with portions of the parenting plan.

² We assume that the parenting plan Mother has sought to enforce has not been modified by the Nevada court in the pending litigation referenced by the trial court in its order dismissing the petition.

CONCLUSION

For the foregoing reasons, we affirm the trial court's dismissal of Father's counter-petition for contempt and reverse the trial court's dismissal of Mother's petition for contempt. The costs of appeal are assessed against Father.

ANDY D. BENNETT, JUDGE